U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644310

Date: MAY 6, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a Brazilian jiu-jitsu athlete and coach, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or by submitting evidence to satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(l)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

A. The Petitioner's Field of Expertise

In Part 6 of the petition, the Petitioner listed his job title for the proposed employment as coach/instructor. In the support letter, the Petitioner explained he achieved "top placement" in Brazilian Jiu-Jitsu (BJJ) by placing at the top in important BJJ championships, and because of his success as a competitor in the sport of BJJ he transitioned into other areas in the field as a coach and referee. The Petitioner further explained that he wishes to continue his career in the United States as an athlete and coach and referee of extraordinary ability "contributing to the growth of the sport of BJJ in the United States and the whole world." In addition, the Petitioner submitted a letter from the Manager of [redacted] confirming that the Petitioner will work at that facility as head instructor and co-owner located in [redacted] Arkansas.

On appeal, the Petitioner states he is unequivocally a BJJ athlete who intends to continue working in his field of expertise. He goes on to state that while the term coach is sometimes used broadly in BJJ, it is customary for higher-ranking belt athletes to mentor and guide less experienced athletes. He also claims that his primary and intended field of endeavor will be to continue his work as an athlete of extraordinary ability in BJJ, and that due to his extraordinary ability as a BJJ athlete and competitor he will pursue coaching and ownership roles in the United States.

As indicated above, the Petitioner intends to work in the United States as a co-owner and instructor at a BJJ school. While the Petitioner claims he will continue his role as an athlete, he did not provide evidence he will compete in competitions as a BJJ athlete. On appeal, the Petitioner submits an updated letter from the school where he will be employed in the United States that indicated the Petitioner will continue as a BJJ competitor, but this statement is not corroborated by the Petitioner. The statute and regulations require a petitioner's national or international acclaim to be sustained and that he or she seeks to continue work in the area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a coach for students of BJJ and a BJJ athlete and competitor share knowledge of the sport, the two rely on very different sets of basic skills. Thus, coaching and management of a school differ from competitive BJJ and do not require the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area; *see also Mussarova v. Garland*, 562 F.Supp.3d 837 (C.D. Ca. 2022) (determining that the plaintiff's awards as a water polo player were not awarded as a water polo coach); *Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, 131 F.Supp.3d 721 (S.D. Oh. 2015) (concluding that the AAO's reasoning, relevant statutory and regulatory language, and case law was not arbitrary, capricious, or otherwise not in accordance with the law in finding that an Olympic gold medal gymnast must meet the extraordinary ability classification through her achievements as a coach, her intended area of expertise).

While we acknowledge the possibility of the petitioner's extraordinary claim in more than one field, such as a BJJ competitor and a BJJ coach, a petitioner, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." *See* the regulation at 8 C.F.R. § 204.5(h)(5).[1] In this case, based on the record before us, the Petitioner intends to continue to work in the area of coaching and co-ownership of a school rather than competing as a full-time BJJ athlete. Thus, the Petitioner must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through the Petitioner's achievements as a coach and owner of a BJJ school.

B. Evidentiary Criteria

We agree with the Director that the Petitioner's awards for several BJJ competitions, while significant, do not constitute a major, internationally recognized prize that qualifies as a one-time achievement under 8 C.F.R. § 204.5(h)(3). Further, on appeal, the Petitioner reiterates the same arguments regarding this issue and does not provide evidence to overcome the Director's concerns. Without such a prize, the Petitioner must submit evidence to satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director found that the Petitioner did not meet any of these evidentiary criteria. After reviewing all of the evidence in the record, we find that he does not meet the requisite three evidentiary criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Director determined that the Petitioner did not submit sufficient evidence to satisfy this criterion, and we agree with that determination.

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[1] 6 *USCIS Policy Manual* F.2(A)(2), https://www.uscis.gov/policymanual provides:

[I]n general, if a petitioner has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching or managing at a national level, officers can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that USCIS can conclude that coaching is within the petitioner's area of expertise.

The Petitioner claims he has won competitions at the highest level hosted by the International Brazilian Jiu Jitsu Federation (IBJJF). The Petitioner further contends that these IBJFF championships are considered the "biggest, most recognized and important BJJ championships in the sport of BJJ." The record reflects that the Petitioner has received numerous medals and accolades in the field jiu-jitsu. In support of the petition, the Petitioner submitted a list of medals and awards that he received between 2011 and 2023, and he also submitted documentation indicating that he either placed first, second, or third place in these competitions.

As it relates to showing that these awards are nationally or internationally recognized for excellence in his field, the Petitioner provided photographs of medals, screenshots from the websites of the event organizers, internet articles discussing the top ten prestigious jiu-jitsu competitions for competitors, and articles confirming his results in competitions. The Petitioner also submitted letters from various BJJ athletes discussing the Petitioner's career achievements and attesting to the prestigious reputations of their respective competitions.[2]

The Director determined that the evidence submitted was insufficient to meet the plain language on this criterion. On appeal, the Petitioner does not directly challenge the Director's determination. Instead, the Petitioner generally points to the evidence submitted with the petition.

Upon review, we conclude that while the recommendation letters from various BJJ athletes speak highly of the Petitioner and his accomplishments, they do not demonstrate that he has won nationally or internationally recognized prizes or awards for excellence in the field. While several authors recount the various medals he received while competing at their events, there is insufficient evidence to demonstrate that his receipt of those medals constitutes national or international recognition in the martial arts field.

Only one letter—the one by [redacted] Team Co-Founder—indicated that the "IBJJF championships are internationally recognized events that attract thousands of athletes, from all over the world, to compete and achieve top placement and improve their international rank." A prize or an award does not garner national or international recognition from the competition in which it is awarded, nor is it derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition should be evident through specific means; for example but not limited to, national or international-level media coverage. Additionally, unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

While the Petitioner has submitted evidence of the various competitions and events in the field, and their perception within the field, the limited evidence of media coverage garnered by the Petitioner's awards in such competitions is insufficient to establish the level of national or international recognition associated with the medals he received at the various competitions discussed herein. Although the Petitioner submitted evidence in the form of web articles and industry statements identifying top competitions in the field, there is insufficient evidence to demonstrate that the Petitioner's receipt of the claimed medals and awards were nationally or internationally recognized.

[2] While we only discuss a sampling of the documents here, we have reviewed the record in its entirety.

While the above materials, and the others in the record, confirm the Petitioner's receipt of these awards, they do not demonstrate the national or international significance of the awards won.[3] The record lacks other evidence establishing that these awards are nationally or internationally recognized for excellence in the field of jiu-jitsu, as required. The Petitioner, therefore, has not submitted documentation sufficient to establish his eligibility for this criterion.

> *Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner claims he meets this criterion based on being a member of the [redacted] Team). The Petitioner explained that the [redacted] Team has affiliates in over 30 countries at hundreds of training centers with athletes and members throughout the world. To satisfy this criterion, the Petitioner must show that he is a member of an association in his field, and that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[4]

The Petitioner pointed to a letter from the [redacted] Team co-founder stating that the [redacted] Team is "considered among the Top 5 BJJ teams in the world" and that the Petitioner is a "skilled professional athlete who proudly represents [redacted] Team in both training and competitions." However, the letter does not indicate the [redacted] Team's membership requirements, nor does it show that outstanding achievements, as judged by recognized national or international experts, are required for membership. Upon review, the Petitioner did not submit sufficient objective evidence to demonstrate the selection process for members of the [redacted] Team as necessary to establish that outstanding achievements are required for membership. In sum, the Petitioner has provided little probative objective evidence to establish the basis for the selection its members and that outstanding achievements are required for membership on the team.

For the reasons discussed above, the evidence submitted here does not show that the Petitioner has a membership in an association that satisfies all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

> *Published material about the noncitizen in professional or major trade publications or other major media, relating to the noncitizen's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

To establish this criterion, the Petitioner must demonstrate the existence of published material about him in professional or major trade publications or other major media, including the title, date, and

[3] *See generally* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)) (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field.)

[4] *See generally* 6 USCIS Policy Manual, supra, at F.2 appendix.

author of the material.[5] If the record supports those regulatory requirements, we will then decide whether professional or major trade publications or other major media published those materials.

The Director determined that the Petitioner did not establish that articles submitted from web portals were from a professional publication, major trade publication, or major media publication, as required. In addition, the Director stated that the Petitioner did not submit full translations and sufficient supporting documentation to demonstrate the probative value of other asserted articles posted on the internet about the Petitioner.

On appeal, the Petitioner contends that the Director erroneously dismissed the submitted published material. For instance, the Petitioner emphasizes articles discussing his accomplishments published on *Flograppling.com*, *Tatame.com*, and *Graciemag.com*. The Petitioner contends that the "modern BJJ community predominantly relies on digital platforms and credible online publications to disseminate information, share news, and recognize excellence within the sport."

On appeal, the Petitioner submits a letter from a senior editor at *Tatame Magazine* that is responsible for the oversight of the website *Tatame.com*. Although the letter's author indicates that *Tatame.com* is "considered the leading media outlet to cover the Brazilian Jiu-Jitsu" and is a "major media outlet in the sport," the author does not provide sufficient information and context to those statements. Evidence of published material in major media publications about the Petitioner should establish that the circulation (online or in print) or viewership is high compared to other statistics and identify the intended audience. *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual (discussing circulation or viewership). The Petitioner did not submit sufficient material establishing the circulation statistics for *Tatame.com*, nor did he provide other circulation statistics in which to compare with this publication.

In response to the request for evidence, the Petitioner indicated that *Graciemag* is considered a major trade publication that prints and distributes more than 30,000 copies per month with more than 10,000 subscribers in both the printed and web versions. However, the Petitioner did not provide sufficient corroborating evidence to substantiate these claims. Further, the record does not contextualize those statistics, indicate their significance, or elaborate on how that information could establish that the website is the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii). For example, the Petitioner did not provide circulation statistics or data to compare the circulation of *Graciemag* with other publications to establish that it represented a major trade publication or major media.

On appeal, the Petitioner indicates articles from *Flograppling.com* establish this criterion, but the Petitioner did not submit information as to the circulation of this website, nor how its circulation compares to other publications. The Petitioner does not specifically articulate why the online articles should be considered professional or major trade publications or other major media, nor does he submit visitation data for these sites or comparisons to other websites to establish that they can be considered professional or major trade publications or other major media.

Although we observe that the documentary evidence reflects some published material about the Petitioner relating to his work as an athlete, the Petitioner has indicated that he will work as an

[5] *See generally* 6 USCIS Policy Manual, supra, at F.2(B)(2) appendix.

instructor while in the United States. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished material about the [noncitizen] in professional or major trade publications or other major media, relating to the [noncitizen's] work in the field for which classification is sought." Here, the Petitioner does not clearly articulate how the articles relate to his proposed work in the United States. *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002.

After reviewing the totality of the evidence submitted in support of this criterion, the Petitioner has not met his burden of proof to demonstrate his eligibility under 8 C.F.R. § 204.5(h)(3)(iii).

C. Summary and Reserved Issue

The record does not establish that the Petitioner meets at least three of the initial evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criteria at 8 C.F.R. § 204.5(h)(i) and (viii) cannot change the outcome of the appeal. Therefore, we reserve and will not address these remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

D. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition adjudicated on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d at 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[6]

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. We therefore need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or render a determination on

[6] *See also* 6 USCIS Policy Manual, supra, at F.2(B)(3).

the issue of whether the Petitioner's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.[7]

Nevertheless, we have reviewed the record in the aggregate and concluded that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[7] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).